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MONTANA LEGISLATIVE HISTORY

Chapter 38 1993

Bill H _____ S 45 Original bill & history ✓ C

H. Committee on Business		S. Committee on Public Health, Welfare	
Hearing Date(s)	___ C	Hearing Date(s)	___ C
1/26	✓ C	1/8	✓ C
	___ C	1/11	✓ C
	___ C	1/13	✓ C
Date Out	1/26 ✓ C		

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

SB 43 INTRODUCED BY DOHERTY

REMOVE SUNSET PROVISION OF THE PHYS THERAPIST, OCCUPATIONAL THERAPIST, AND HOSPITAL LIEN ACT

12/23	INTRODUCED
12/23	REFERRED TO BUSINESS & INDUSTR
1/04	FIRST READING
1/05	HEARING
1/13	COMMITTEE REPORT—BILL PASSED
1/14	2ND READING PASSED
1/15	3RD READING PASSED
	TRANSMITTED TO HOUSE
1/16	FIRST READING
1/16	REFERRED TO HUMAN SERVICES & A
1/20	HEARING
1/22	HEARING
1/27	COMMITTEE REPORT—BILL CONCUR
1/30	2ND READING CONCURRED
1/30	FISCAL NOTE REQUESTED
2/02	FISCAL NOTE RECEIVED
2/02	FISCAL NOTE PRINTED
2/03	3RD READING CONCURRED
	RETURNED TO SENATE
2/08	SIGNED BY PRESIDENT
2/09	SIGNED BY SPEAKER
2/09	TRANSMITTED TO GOVERNOR
2/12	SIGNED BY GOVERNOR
	CHAPTER NUMBER 35
	EFFECTIVE DATE: 02/11/93

SB 44 INTRODUCED BY HALLIGAN

CREATE LAW ENFORCEMENT OFFICERS' BILL

12/23	INTRODUCED
12/23	REFERRED TO LOCAL GOVERNMENT
1/04	FIRST READING
1/04	FISCAL NOTE REQUESTED
1/11	FISCAL NOTE RECEIVED
1/11	FISCAL NOTE PRINTED
1/11	FISCAL NOTE PRINTED
2/11	TABLED IN COMMITTEE

SB 45 INTRODUCED BY KEATING

REVISE MORTICIAN AND CREMATORY LAWS

BY REQUEST OF BOARD OF MORTICIANS

12/23	INTRODUCED
12/23	REFERRED TO PUBLIC HEALTH, WEL
1/04	FIRST READING
1/04	FISCAL NOTE REQUESTED
1/08	HEARING
1/11	FISCAL NOTE RECEIVED
1/11	FISCAL NOTE PRINTED
1/15	COMMITTEE REPORT—BILL PASSED
1/16	2ND READING PASSED
1/18	3RD READING PASSED
	TRANSMITTED TO HOUSE
1/19	FIRST READING
1/19	REFERRED TO BUSINESS & ECONOM

1/26 HEARING
1/28 COMMITTEE REPORT—BILL CONCURRED
1/30 2ND READING CONCURRED
2/03 3RD READING CONCURRED

RETURNED TO SENATE
2/08 SIGNED BY PRESIDENT
2/09 SIGNED BY SPEAKER
2/09 TRANSMITTED TO GOVERNOR
2/15 SIGNED BY GOVERNOR
CHAPTER NUMBER 38
EFFECTIVE DATE: 02/10/93

SB 46 INTRODUCED BY HALLIGAN

REVISE UNIFORM PARTNERSHIP ACT

12/23 INTRODUCED
12/23 REFERRED TO JUDICIARY
1/04 FIRST READING
1/12 HEARING
1/14 FISCAL NOTE REQUESTED
1/20 FISCAL NOTE RECEIVED
1/21 FISCAL NOTE PRINTED
1/29 COMMITTEE REPORT—BILL PASSED AS AMENDED
1/30 2ND READING PASSED
2/01 3RD READING PASSED

TRANSMITTED TO HOUSE
2/02 FIRST READING
2/02 REFERRED TO JUDICIARY
3/09 HEARING
3/10 COMMITTEE REPORT—BILL CONCURRED
3/13 2ND READING CONCURRED
3/16 3RD READING CONCURRED

RETURNED TO SENATE
3/24 SIGNED BY PRESIDENT
3/25 SIGNED BY SPEAKER
3/30 TRANSMITTED TO GOVERNOR
4/01 SIGNED BY GOVERNOR
CHAPTER NUMBER 238
EFFECTIVE DATE: 10/01/93

SB 47 INTRODUCED BY WEEDING

EXTEND INCOME TAX CREDIT FOR RURAL PHY ASSISTANTS-CERTIFIED

12/23 INTRODUCED
12/23 REFERRED TO TAXATION
1/04 FIRST READING
1/04 FISCAL NOTE REQUESTED
1/08 FISCAL NOTE RECEIVED
1/09 FISCAL NOTE PRINTED
1/15 HEARING
1/20 TABLED IN COMMITTEE

SB 48 INTRODUCED BY BURNETT

ELIMINATE STATE MEAT AND POULTRY INSPECTION PROGRAM

12/23 INTRODUCED
12/23 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATIO
1/04 FIRST READING
1/04 FISCAL NOTE REQUESTED

SENATE BILL NO. 45

INTRODUCED BY KEATING
BY REQUEST OF THE BOARD OF MORTICIANS

IN THE SENATE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
JANUARY 4, 1993	FIRST READING.
JANUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 16, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 18, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 19, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
JANUARY 30, 1993	SECOND READING, CONCURRED IN.
FEBRUARY 3, 1993	THIRD READING, CONCURRED IN. AYES, 96; NOES, 3.
FEBRUARY 4, 1993	RETURNED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 45

INTRODUCED BY KEATING

BY REQUEST OF THE BOARD OF MORTICIANS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF CREMATORIUMS, CREMATORY OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES, INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING; PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS; GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103, 35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216, 35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND 37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND 35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 through 10] grant rulemaking authority to the board of funeral service to implement provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) establishing license application procedures, license fees, criteria for minimum requirements for license eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal, suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed crematory operators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Purpose.** The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of [sections 1 and 4 through 10] to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

Section 2. Section 2-15-1853, MCA, is amended to read:

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"2-15-1853. **Board of ~~morticians~~** funeral service. (1) There is a board of **~~morticians~~** funeral service.

(2) The board consists of five members appointed by the governor with the consent of the senate. ~~Four~~ Three members **~~shall~~** must be licensed morticians. One member **~~shall~~** must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 37-19-101, MCA, is amended to read:

"**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) an adult child;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person listed in subsections (1)(a) through (1)(d), a personal representative, a public

administrator, the deceased through a preneed authorization, or others as designated by board rule.

~~(1)~~(2) "Board" means the board of **~~morticians~~** funeral service provided for in 2-15-1853.

(3) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(4) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(5) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(6) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(7) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(8) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(9) "Crematory operator" means the person in charge of the licensed crematory facility.

(10) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

~~(2)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~(12) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

~~(4)~~(13) "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation,

disposition, or care of dead human bodies; and

(d) ~~the holding out~~ representing to the public that one is a funeral director ~~or undertaker~~.

(14) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(15) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

~~(5)~~(16) ~~A "mortician" is~~ "Mortician" means a person licensed under this chapter to practice mortuary science.

~~(6)~~(17) ~~A "mortuary" is~~ "Mortuary" means a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents ~~himself as~~ that the person is engaged in the profession of mortuary science or funeral directing.

~~(7)~~(18) "Mortuary science" ~~is~~ means the profession or practice of funeral directing and embalming.

(19) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(20) "Urn" means a receptacle designed to permanently encase the cremated remains."

NEW SECTION. **Section 4. Licenses required -- display of licenses -- renewal -- penalty for late renewal.** (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on June 30 of each year and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on June 30 of each year and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

NEW SECTION. **Section 5. Application -- power of board to set standards -- inspection -- fees.** (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral

character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the

application.

NEW SECTION. **Section 6. Cremation authorization required -- identification.** (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

NEW SECTION. **Section 7. Cremation procedures -- cremation containers.** (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for taking all necessary steps to ensure that any pacemakers or other hazardous implants are removed prior to cremation.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place

the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the

cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

NEW SECTION. **Section 8. Disposition of cremated remains.** (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated

remains, if known.

(2) The authorizing agent is responsible for disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container. This subsection (3) does not apply to the cremated remains of members of the same family that are placed in a common closed container designed for the cremated remains of more than one person.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

NEW SECTION. **Section 9. Limitation of liability.** (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who cremates human remains or releases or disposes of cremated remains is not liable for the cremation, release, or disposition if the crematory, crematory operator, or crematory technician has received a signed cremation authorization form from the authorizing agent.

(3) A crematory operator or crematory technician is not responsible or liable for any valuables delivered to the

crematory with the human remains.

(4) A crematory operator or crematory technician is not liable for refusing to accept a body or perform a cremation:

(a) for any lawful reason;

(b) if the crematory operator or crematory technician has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(c) until receipt of a court order or other suitable confirmation that a dispute has been settled if the crematory operator or crematory technician is aware of any dispute concerning the cremation of the human remains.

(5) If a crematory operator or crematory technician is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator or crematory technician may refuse to release the cremated remains until the dispute has been resolved or until the crematory operator or crematory technician has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory, crematory operator, or crematory technician is not liable for refusing to release or dispose of cremated remains in accordance with this subsection.

(6) Upon disposing of cremated remains, the person in possession of the cremated remains is discharged from any legal obligation or liability concerning the cremated

remains.

NEW SECTION. **Section 10.** **Preneed cremation authorizations.** (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death unless additional or conflicting instructions are received from a designated authorizing agent.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

Section 11. Section 35-21-102, MCA, is amended to read:

"**35-21-102. Definitions.** For the purposes of this chapter, certain words used ~~herein--shall~~ in this chapter have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure

containing that contains niches for permanent inurnment of cremated remains, as defined in 37-19-101, in a place used or intended to be used and dedicated for interment purposes.

~~(2)--"Cremated---remains"---means--human--remains--after cremation-in-a-crematory;~~

~~(3)--"Cremation"-means-the-reduction-of-the--body--of--a deceased-person-to-cremated-remains-in-a-crematory;~~

~~(4)--"Crematory"---means---a---building---or---structure containing--one--or-more-retorts-for-the-reduction-of-bodies of-deceased-persons-to-cremated-remains;~~

~~(5)~~(2) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb ~~the~~ uncremated human remains.

~~(6)~~(3) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

~~(7)~~(4) "Entombment" means the placement of human remains in a crypt or vault.

~~(8)~~(5) "Human remains" or "remains" ~~means-the-body-of-a deceased-person-and--includes--the--body--in--any--stage--of decomposition--and--cremated--remains~~ has the meaning as defined in 37-19-101.

~~(9)~~(6) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment

purposes.

~~(10)~~(7) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

~~(11)~~(8) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

~~(12)~~(9) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

~~(13)~~(10) "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any ~~and-all~~ business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium~~;~~ interring human remains ~~therein;~~ and the care, preservation, and embellishment of ~~such~~ the property.

~~(14)~~(11) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

~~(15)~~(12) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment

purposes by entombment or inurnment but ~~shall~~ does not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums ~~and/or~~ or columbariums where interment is also made by ground burial.

~~(16)~~(13) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

~~(17)~~(14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. ~~Such~~ The terms include and apply to one or more ~~than-one~~ adjoining crypts or vaults or one or more ~~than-one~~ adjoining niches.

~~(18)~~(15) "Plot owner", ~~or~~ "owner", or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

~~(19)~~(16) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

~~(20)~~(17) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. ~~Wherever~~ Whenever the

context ~~shall--permit~~ permits, "urn garden" ~~shall-be-deemed to-be~~ is included in "columbarium"."

Section 12. Section 35-21-103, MCA, is amended to read:

"**35-21-103. Exemptions and limitations on applicability of chapter.** (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium;

(c) any crematory, crematory operator, or crematory technician licensed under Title 37, chapter 19.

(2) ~~No~~ A condition, ~~or~~ section, or provision of this chapter ~~shall-or~~ may not be ~~so~~ construed or interpreted ~~as~~ to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana

in which a mausoleum, columbarium, or crematory or combination thereof ~~shall be~~ is situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions ~~shall be~~ are applicable to ~~and only to~~ mausoleums ~~and/or~~ or columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as ~~herein~~ provided in this chapter and owning, controlling, or operating lands, buildings, or structures~~, etc.,~~ solely for the entombment and inurnment of human remains."

Section 13. Section 35-21-204, MCA, is amended to read:

"**35-21-204. Power to establish and operate mausoleum~~,~~ or columbarium~~,~~ ~~or crematory~~.** ~~Any~~ A private corporation organized under the laws of the state of Montana and authorized by its articles ~~so to do~~ may establish, maintain, manage, improve, or operate a mausoleum, columbarium, ~~or crematory~~ or ~~any combination thereof~~ mausoleum-columbarium and conduct any ~~or all~~ of the businesses of a mausoleum-columbarium ~~and crematory~~ either for or without profit to its members or stockholders."

Section 14. Section 35-21-207, MCA, is amended to read:

"**35-21-207. Rulemaking power.** A mausoleum-columbarium authority may ~~make, adopt, amend, add to, revise, or modify~~ and enforce rules for the use, care, control, management,

restriction, and protection of all or any part of its mausoleum~~,~~ or columbarium~~, or crematory~~ and for the other purposes specified in 35-21-208 ~~to~~ through 35-21-216~~,~~ ~~inclusive~~."

Section 15. Section 35-21-208, MCA, is amended to read:

"**35-21-208. Power to limit use of property.** ~~It~~ A mausoleum-columbarium authority may restrict and limit the use of all property within its mausoleum~~,~~ or columbarium~~, or crematory~~."

Section 16. Section 35-21-214, MCA, is amended to read:

"**35-21-214. Rules for other purposes.** ~~It~~ A mausoleum-columbarium authority may make and enforce rules for all other purposes ~~deemed~~ considered necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum~~,~~ or columbarium~~, or crematory~~, for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum~~,~~ or columbarium~~, or crematory~~ is conducted."

Section 17. Section 35-21-216, MCA, is amended to read:

"**35-21-216. Person in charge has authority of peac officer.** The sexton, superintendent, or other person i charge of a mausoleum-columbarium and ~~such~~ any other perso ~~as~~ designated by the mausoleum-columbarium authorit ~~designates has~~ have the authority of a peace officer for th

purpose of maintaining order~~,~~ and enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which ~~he~~ the person has charge and within ~~such~~ the radius ~~as-may-be~~ necessary to protect the mausoleum-columbarium ~~or-crematory~~ property."

Section 18. Section 35-21-217, MCA, is amended to read:

"**35-21-217. Power to acquire property.** Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, ~~crematories~~~~,~~ and columbariums within which the interment of the dead may be authorized by law."

Section 19. Section 35-21-302, MCA, is amended to read:

"**35-21-302. Liability of person signing authorization for interment ~~or--cremation~~.** ~~Any~~ A person signing ~~any~~ an authorization for the interment ~~or-cremation~~ of ~~any~~ remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred ~~or-cremated~~, and ~~his~~ the authority to order interments ~~or-cremation~~. ~~He~~ The person signing an authorization is personally liable for all damage occasioned by or resulting from a breach of ~~such~~ the warranty."

Section 20. Section 35-21-303, MCA, is amended to read:

"**35-21-303. Authorization exempts mausoleum-columbarium from liability.** The mausoleum-columbarium authority may

inter ~~or--cremate~~ any remains upon the receipt of a written authorization of a person ~~representing-himself-to-be--a~~ who represents that the person ~~who~~ has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring ~~or-cremating~~ pursuant to ~~such~~ the authorization unless it has actual notice that ~~such~~ the representation is untrue."

Section 21. Section 35-21-304, MCA, is amended to read:

"**35-21-304. Limitation on actions against mausoleum-columbarium -- funeral directors, and morticians, and crematory authority exempt from liability.** ~~No~~ An action ~~shall~~ may not lie against any mausoleum-columbarium authority relating to the remains of any person ~~which~~ that have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. ~~Nothing-in-this-section shall-be-construed-as-an-extension-of-the--existing--statute prescribing--the--period-within-which-an-action-based-upon-a tort-must-be-commenced.--No~~ A licensed mortician, ~~or~~ funeral director, crematory authority, crematory operator, or crematory technician ~~shall-be~~ is not liable ~~in--damages~~ for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana."

Section 22. Section 35-21-417, MCA, is amended to read:

"**35-21-417. Commission or rebate for causing disposition of body in ~~crematory,~~ mausoleum, or columbarium -- misdemeanor.** ~~Every~~ A person who pays, or causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission, ~~or~~ bonus, ~~or~~ rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any ~~crematory,~~ mausoleum, or columbarium is guilty of a misdemeanor, and each violation ~~shall--constitute~~ constitutes a separate offense."

NEW SECTION. **Section 23.** Repealer. Sections 35-21-504, 35-21-505, and 35-21-709, MCA, are repealed.

NEW SECTION. **Section 24.** Codification instruction. [Sections 1 and 4 through 10] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections 1 and 4 through 10].

NEW SECTION. **Section 25.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on January 8, 1993, at 1:00 pm.

ROLL CALL

Members Present:
Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: none.

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 34, SB 45, SB 7
Executive Action: none.

Announcement:

Sen. Eck, Chair turned the chairmanship over to Sen. Eve Franklin for the hearing on SB 34.

HEARING ON SB 34

Opening Statement by Sponsor:

Sen. Dorothy Eck, Bozeman, said SB 34 is one of several bills coming from the Interim Committee on Children and Families. Sen. Eck discussed the history of legislation and committees dealing with children's issues beginning with the Department of Family Services. Groups including the regional advisory council for children began to focus on the importance of prevention, for instance identifying at-risk families as well as children. Sen. Eck and Rep. Royal Johnson both had legislation during the last

Bill Levine, Center for Adolescent Development, a non-profit organization which provides prevention-based services to teens, said SB 34 will save money because prevention saves money in the long run.

Dan Anderson, Administrator of the Mental Health Division, Department of Corrections and Human Services, provided summaries of community mental health programs currently going on for children and families in Montana. (Exhibit #9)

Paulette Kohman, Executive Director Montana Council for Maternal and Child Help, said that the Children's Alliance was unable to clearly organize the agencies described in the Montana Children's Agenda for 1993. (Exhibit #10) Two years were spent trying to organize agencies for the document. She said inter-agency coordination is very important.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Towe asked Sen. Eck about funding. Sen. Eck said there wouldn't be a major appropriation requirement, and this subject could be dealt with when executive action was taken.

Sen. Towe asked why the Board of Crime Control's participation on the coordinating agency had been taken out of SB 34. Sen. Eck said it was because the Attorney General's office was added, and it was assumed that the Board of Crime Control is the part of the Attorney General's office that deals with prevention. She suggested that as an amendment, and this part of SB 34 was left open so that the Governor could appoint people to serve on this council.

Sen. Mesaros asked Sen. Eck if this committee would replace any already existing coordinating committees. Sen. Eck said she didn't think so. It may replace the ad hoc Prevention Caucus, which could become a part of this.

Closing by Sponsor:

Sen. Eck said she appreciates the testimony given, and that SB 34 is significant at both the state and local levels.

HEARING ON SB 45

Opening Statement by Sponsor:

Sen. Tom Keating, said SB 45 is an act providing for the

licensing and regulation of crematoriums, crematory operators and technicians. The Sunrise process was instituted by the legislature during the last legislative session for the licensing of morticians and funeral service directors. SB 45 comes out of the Sunrise licensing application process. Sen. Keating offered an amendment. (Exhibit #11)

Proponents' Testimony:

Guy Miser, member, Board of Morticians, provided written testimony. (Exhibit #12)

Bonnie Tippy, Executive Director of the Montana Funeral Directors Association, highlighted parts of SB 45. (Exhibit #13) For example, who is an authorizing agent, licensing the crematory and the crematory operator(page 8), the authorizing agent must let the crematory operator know to the best of his knowledge if there is an implant in the body such as a pace maker (page 10, sub 3, section 7), rules for simultaneous cremation of two or more entities(page 7, sub 7), and length of time the cremains will be held by the funeral home (page 13, sub 2, line 2). She told the Committee it was not the intent of the funeral directors to exempt themselves from liability. She also said the authorizing agent was the only person who could sue the crematory or crematory operator. She said SB 45 is really about the responsibility of crematory operators and the people who want to use crematories.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers provided written testimony. (Exhibit #14) He said the Montana Trial Lawyers have no objections to establishing uniform standards of conduct, but they question the need for special protection from liability.

Questions From Committee Members and Responses:

Sen. Hager asked about the case of power of attorney being granted to one of the children as opposed to the majority of adult children referred to in SB 45. Sen. Towe said that the power of attorney immediately ceases upon the death of the individual, so SB 45 would not be affected.

Chairman Eck asked about the definition of "pre-need". Carol Grell, legal council for the Board of Morticians said definitions being discussed are already contained in the Board of Morticians statute. "Pre-need" is one of those definitions.

Sen. Rye asked Guy Miser how ashes are identified. Mr. Miser said there are metal tags with identification numbers with the cremains when they are removed from the retort.

Sen. Rye asked if it was possible to murder someone by cremation. Guy Miser said there is a Montana that all remains must be cleared through the County Coroner before cremation can take place.

Sen. Rye asked if morticians and funeral directors were trying to absolve themselves from potential liability. Bonnie Tippy said that was never the intent, but when there are no laws there are a lot of lawsuits. When legislation is clear on rules, then lawsuits are avoided.

Sen. Christiaens asked about the disposition of indigent or unidentified bodies, and cremation as a way of disposing of these individuals inexpensively rather than a funeral. Guy Miser said crematory operator must get permission from legal authorities to dispose unidentified bodies. He was unaware of costs.

Sen. Christiaens said Section 6 Line 6 of SB 45 it appears that they would not be able to cremate unidentified remains. Mary Lou Garrett, Administrator, Montana Board of Morticians, said counties regulate the fees, and the coroner or county commissioner is responsible for disposition of an unidentified body, they sign as the authorizing agent. It must be a county official, and this is already set up in county ordinances.

Sen. Towe asked Bonnie Tippy about taking out the provision making it a misdemeanor not to mark or identify a casket or container correctly. Ms. Tippy said that was not the intent. Mary Lou Garrett the Board of Morticians provisions on identification cover this, and this would be handled as other misdemeanors would be.

Sen. Towe asked Mary Lou Garrett about fire proof construction regulations being taken out of the SB 45. Ms. Garrett said existing county fire codes cover mortuaries and crematories.

Sen. Towe asked why cremators should be immune to liability when disposing of cremated remains. He said the amendment offered by the Board of Morticians was confusing, and why is the authorizing agent the only person who can sue a crematory. He asked why special laws regarding liability were needed. Carol Grell said each section of the limitation of liability deals with different areas that often occurs in crematoriums. If the guidelines are correctly followed, the crematory operators are protected.

Chairman Eck suggested that Sen. Towe meet with Board of Mortician's attorney for further clarification.

Sen. Towe asked if the Board of Morticians was determined to have a provision dealing with the limitation of liability in SB 45. Carol Grell said it could be amended.

Sen. Mesaros asked Guy Miser if it was true that fifty percent of remains preceed to cremation. Guy Miser said it was true.

Closing by Sponsor: Sen. Keating said that Sen. Towe and the Board of Morticians could work out an agreement and closed the hearing on SB 45.

HEARING ON 7

Opening Statement:

Chairman Eck reopened the hearing on SB 7 because none of the proponents were at the first hearing on Jan. 6, 1993.

Proponents' Testimony:

David Cunningham, CEO of the Rimrock Foundation and member of the Billings Homeless Coalition provided written testimony. (Exhibit #15)

Opponents' Testimony:

none.

Questions From Committee Members and Responses:

Sen. Klampe asked David Cunningham about the proposed amendment to allow groups like the Rimrock Foundation to go into the second section of SB 7 making it one of the three groups chosen from to serve on the board.

Sen. Franklin said the amendment would make them one of the optional groups to serve the board, not one of the mandated groups to serve on the board. Mr. Cunningham said that would be fine, as long as there was a way coalitions such as the Coalition for the Homeless could have input in Mental Health Board's allocation of funds.

Chairman Eck asked if Mr. Cunningham had appeared in front of the Mental Health Board to ask for support from them. Mr. Cunningham said they hadn't. He understood that the make up of the Board was mandated.

Sen. Towe said that mental health boards are appointed by county commissioners. Sen. Towe asked Mr. Cunningham if it an option to be appointed to the board. Mr. Cunningham said it was possible.

Sen. Towe asked if Mr. Cunningham was at the Committee hearing as a member of the Rimrock Foundation or the Billings Coalition for the Homeless. Mr. Cunningham said he represented both.

Sen. Towe asked if the Rimrock Foundation had taken a position on SB 7. Mr. Cunningham said yes, they support the bill.

Amendment to Senate Bill 45

Proposed by the Montana Funeral Directors Association

1. Page 14, line 23.

Following: "agent."

Insert: "However, a crematory, crematory operator, or crematory technician who intentionally, recklessly, or negligently removes, releases, disposes of, withholds, or mutilates human remains or cremated remains or prevents the proper cremation of human remains is liable to the authorizing agent."

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 1-8-93
BILL NO. SB 45

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE 1-8-93
BILL NO. SB 45

BOARD OF MORTICIANS
DEPARTMENT OF COMMERCE

ARCADE BUILDING
111 N. JACKSON

STATE OF MONTANA

(406) 444-5433

HELENA, MONTANA 59620-0407

DATE: January 8, 1993

TO: Senate Public Health Committee

FROM: Guy Miser, Board of Morticians

RE: S.B. 45

There are many considerations that must be taken into account when a Crematory is entrusted with the disposition of human remains. The identification of the deceased, the holding of the remains for cremation, the cremation process, and the processing, packing and disposition of the cremated remains are items of concern not only to the crematory, but also to the consuming public. High standards must be employed during all phases of the cremation process.

Disposition by cremation in the state of Montana, as of today, is taking place almost 50% or more of the time. Considering that this choice of disposition is almost the the same as ground burial, one would expect this growing industry to be under some form of guidelines to protect the public. The initial reason this legislation was proposed was to create regulations for enforcement of proper cremation procedures to protect the public health, safety and welfare. Therefore, uniform procedures should be developed in order to maintain the professionalism and public trust expected from those involved in this vital service.

It is the object of the Board to ensure that all of the procedure reflect those high standards and serve as a guide for those professionals charged with the sacred trust of the disposition of the human body by cremation, within the realm of law and dignity.

There is currently no regulation of crematories in the state. They are not inspected for sanitary requirements, identification of bodies is not required, record keeping is not mandated. With licensure, the public will be assured that there will be dignity in service, that the cremated remains they receive are the right person, and that persons operating or working in a crematory will follow the highest standards and ethics possible.

In closing, common sense dictates the necessity of this legislation to be enacted. I have also enclosed a newspaper article that appeared in newspapers around the state last summer. This article refers to an incident that happened in Flathead county during the past year. I am not including this article to show what the lack of regulations can mean, but to inform this Committee that the Board of Morticians intended to propose this legislation as far back as June, 1991, not a reaction to an incident, as this article implies. It was at this time that the board realized the need for crematory licensure, but the board wanted to fully investigate the need, compare other states legislation, and then propose comprehensive legislation to better serve the citizens of our state.

Crematorium rules sought

State Board of Morticians calls for licensing, regulations

HELENA (AP) — Criminal charges filed against a Kalispell mortician over his operation of a crematorium have prompted a request that such facilities be licensed and regulated by the state.

The proposal from the state Board of Morticians is one of four changes in state licensing programs recently submitted to the Legislative Audit Committee for review. The panel will decide whether to recommend any changes to the 1993 Legislature.

Crematoriums will be discussed by the committee at its Oct. 19 meeting, along with a proposal for licensing of clinical lab workers.

At its November meeting, the committee will consider changes in regulation of denturists and a request for licensing of property managers.

The crematorium proposal was developed after Kalispell mortician Dixon B. Rice was charged in May with six counts of theft connected with Weatherford Funeral Home.

Among other things, Rice is charged with giving a family the cremated ashes that were not those of a deceased relative as the family was led to believe. Rice also was accused of charging families for cremating deceased relatives in caskets when the coffins were actually returned to his inventory.

That case has made the public very aware of problems that can occur in crematory operations, the Morticians Board said in its application.

In 1990, there were 2,288 cremations performed in Montana. The state has 13 crematoriums, but they are not inspected for sanitation, identification of bodies is not required and record keeping is not mandated, the board said.

"With licensure, the public will be assured that there will be dignity in service, that the remains they receive are for the right person, and that persons operating or working in a crematory will be trained and made aware of the danger of communicable diseases," the application said.

Regulation of crematoriums would have handled by the five-member Board of Morticians.

The change in regulation of denturists comes from the profession's state association. It wants control of denturists to be transferred from the Board of Dentistry to the Alternative Health Care Board.

> "With licensure, the public will be assured that there will be dignity in service..."
>
> —State Board of Morticians request to audit committee

The request reflects a continuing feud between dentists and denturists that dates to 1984 when passage of a ballot measure legalized denturitry in Montana.

In their proposal, the denturists said they want out from under the control of dentists who have always seen the younger profession as competition.

The Board of Dentistry is trying to create a monopoly by suggesting regulation changes "removing the freedom of choice given to the public under the provisions of the original referendum," the denturists said.

"It would also seem that the goal of the Board of Dentistry is to put the denturists out of business and return the field of dentures to pre-referendum days."

The denturists cite a board proposal that would require a patient be referred to a dentist before being fitted for a partial denture.

This is the second time the Board of Realty Regulation has requested licensing of property managers. The board wants to ensure adequate education of property managers in such areas as privacy, landlord-tenant laws, fair housing ad bookkeeping.

The board estimates Montana has 250 property managers.

Education and proper training is the goal of request for state regulation of an estimated 900 lab workers in the state.

"The failure to perform clinical laboratory tests correctly with sufficient accuracy and precision could result in the mis-diagnosis or improper treatment of patients," the proposal said.

SENATE HEALTH & WELFARE
EXHIBIT NO. 13
DATE 1-8-93
BILL NO SB 45

SB 0045/01

"2-15-1853. Board of ~~morticians~~ funeral service. (1) There is a board of ~~morticians~~ funeral service.

(2) The board consists of five members appointed by the governor with the consent of the senate. ~~Four~~ Three members ~~shall~~ must be licensed morticians. One member ~~shall~~ must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 37-19-101, MCA, is amended to read:

"37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) ~~an adult child;~~ A MAJORITY OF ADULT CHILDREN;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

~~(1)~~(2) "Board" means the board of ~~morticians~~ funeral service provided for in 2-15-1853.

(3) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(4) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(5) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(6) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(7) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

Montana Trial Lawyers Association

iood
r Emeritus
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. Beers
D. Cok
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nglund
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Governor

SENATE HEALTH & WELFARE
EXHIBIT NO. # 14
DATE 1-8-93
BILL NO. SB45

January 8, 1993

Sen. Dorothy Eck, Chair
Senate Public Health, Welfare
and Safety Committee
Room 410, State Capitol
Helena, MT 59620

RE: SB 45

Madame Chair, Members of the Committee:

The Montana Trial Lawyers Association opposes Senate Bill 45 as written, which limits the liability of crematoriums, crematory operators, and crematory technicians for negligence and even gross or malicious negligence. MTLA believes that compliance with licensing and regulation provisions will provide not just ample but also demonstrable protection against liability without the blanket immunity provided by several provisions of SB 45. For example, signed cremation authorization forms will provide any crematorium, crematory operator, or crematory technician powerful evidence that they have performed properly. Moreover, MTLA believes that liability--often more effectively than administrative discipline--promotes compliance with applicable laws, regulations, and industry standards.

Several provisions of SB 45 concern MTLA:

1. Section 6(1) prohibits a crematory from cremating human remains until it receives a cremation authorization. There is no corresponding requirement that the cremation comply with the cremation authorization.

2. Section 7(3) subjects the "authorizing agent," usually a close family member, to liability--presumably to the crematory--for failing to remove "hazardous implants" prior to cremation.

3. Section 7(7) immunizes even gross or malicious negligence.

4. Section 8(1) refers to the "disposition" of cremated remains, an important term throughout this bill but one which is never defined. Subsection

(2) imposes responsibility for "disposition" of cremated remains on the authorizing agent, apparently even when a crematorium, crematory operator, or crematory technician improperly disposes of remains.

5. Section 8(3) apparently allows a crematorium, crematory operator, or crematory technician to unilaterally place the cremated remains of family members in a common container.

6. Section 9(2) immunizes a crematory, crematory operator, or crematory technician who receives a signed authorization form even if they do not comply with that form and even if their negligence is gross or malicious.

7. Section 9(3) applies an absolute "finders-keepers" rule to crematory operators and crematory technicians.

8. Section 9(6) completely immunizes the person in possession of cremated remains from all liability upon disposing of those remains, regardless of any actions preceding that disposition and regardless of whether the disposition was in accordance with the authorization form or other applicable laws.

9. Section 10(3) completely immunizes a crematory, crematory operator, or crematory technician from all liability for cremating and disposing of remains in accordance with a pre-need authorization form, even though the preceding subsection contemplates that an authorizing agent can issue additional or conflicting instructions after executing the pre-need authorization form.

MTLA appreciates the opportunity to review and comment on SB 45. If I can provide additional information or assistance, please contact me.

Respectfully,

Russell B. Hill
Executive Director

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on January 11, 1993, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: none.

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing:
Executive Action: SB 6, SB 7, SB 34, SB 45

EXECUTIVE ACTION ON SB 6

Motion/Vote:

Sen. Christiaens moved the amendments to SB 6. Motion carried unanimously.

Motion/Vote:

Sen. Franklin moved that SB 6 as amended DO PASS. Motion carried unanimously.

Sen. Eck asked about grants to local groups. Sen. Christiaens said generally funds go to the sheriff's department or the police department.

Sen. Eck said that Fred Fisher said that one of the directives of the expenditure of the federal funds was to plan for collaboration. Sen. Eck said there are two other bills which address prevention to come to the Public Health Committee soon, so Committee members should keep that in mind.

EXECUTIVE ACTION ON SB 45

Discussion:

Sen. Towe said that he had received amendments from the Board of Morticians, and they showed a good faith effort of addressing the concerns Sen. Towe had during the first hearing of SB 45. He asked that SB 45 be kept open for review.

Motion:

Sen. Towe moved that on page 3, Line 21, strike "an adult child" and insert "a majority of adult children", and that grammatical corrections be made to reflect this change.

Vote:

Motion to Amend SB 45 carried unanimously.

Discussion:

Bonnie Tippy, Board of Morticians, said that the problem with the Sen. Towe's additions to the Board of Mortician's amendment is that the new amendment says that anyone has a cause of action and what the Board of Morticians is trying to do is to limit who can sue a funeral home or crematory. They don't want "people coming out of the woodwork to launch a lawsuit."

Sen. Towe said that his additions to the amendment meant that if funeral homes and crematories follow procedure outlined in SB 45, it is presumed they are acting without negligence.

Chairman Eck asked if that section should be replaced. Sen. Towe said that he had asked to delay further action until this had been worked out with the Board of Morticians.

Sen. Christiaens asked about the disposal of ashes. Susan Fox asked the Department of Commerce about the definition of "disposition", and they said that it is an industry standard term, and if the Committee defined "disposition", it may compromise something for the Department of Health.

Chairman Eck asked about remains being kept for a certain period of time. Susan Fox said that the Montana Trial Lawyers Association had liability concerns about this as well.

Sen. Towe said he takes the position of the Board of Morticians in the instance of disposing of remains. SB 45 requires that a very accurate record be kept of the authorizing agent's wishes regarding the disposal of remains. If the crematorium is lax about keeping a record, then they are negligent. Sen. Towe said he would review all these points with the Board of Morticians and the Montana Trial Lawyers Association.

Sen. Rye asked Sen. Towe if he were a member of the Montana Trial Lawyers Association. Sen. Towe said he was not a member, but that he agreed with them on this issue.

Sen. Towe asked about the dangers of pace makers. Bonnie Tippy said they are very dangerous and can explode. The morticians or a doctor must remove them, and it is very important that authorizing agents let the crematory personnel know about pace makers.

Sen. Christiaens asked about a scar left by the implantation of a pace maker. Mary Lou Garrett, Board of Morticians, said that it is similar to other operational scars.

Sen. Towe said that if the authorizing agent failed to disclose the implantation of a pace maker in a body, then the funeral director would have a lawsuit against that individual.

Chairman Eck said executive action on SB 45 would be finished after Sen. Towe had a chance to speak with the Board of Morticians.

ADJOURNMENT

Adjournment: Chairman Eck adjourned the meeting.

Dorothy Eck
SENATOR DOROTHY ECK, Chair

Laura Turman
LAURA TURMAN, Secretary

DE/LT

930111PH.SM1

NAME Mary Lou Garrett

ADDRESS

HOME PHONE ~~5433~~ WORK PHONE 444-5433

REPRESENTING Board of Morticians

APPEARING ON WHICH PROPOSAL? SB45

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Answer Cmty Questions on Cremation Legislation on SB45 on behalf of the Board of Morticians

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F11

Legislative Audit Committee

State of Montana

Report to the Legislature

)ecember 1992

Sunrise Report -- 1993 Biennium

Summary of Sunrise Proposals for the Licensure of:

- Crematoriums and Crematory Technicians
- Clinical Laboratory Science Practitioners
- Property Managers
- Denturists

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

93SP-11

Legislative Audit Committee

Montana State Legislature

Room 135, State Capitol
Helena, MT 59620
(406) 444-3122

SENATE MEMBERS
Senator Greg Jergeson, Chair
Senator Eve Franklin
Senator Lorents Grosfield
Senator Tom Keating

HOUSE MEMBERS
Representative John Cobb, Vice-Chair
Representative Larry Grinde
Representative Mike Kadas
Representative Robert Pavlovich

December 1992

The 53rd Montana State Legislature:

This report is in response to the Sunrise law which requires the Legislative Audit Committee to evaluate qualifying proposals to establish new professional or occupational licensing programs. The Committee must also review proposals to transfer licensing programs between existing licensing boards. During the 1993 Biennium, the Committee evaluated proposals to establish licensing programs for crematoriums and crematory technicians, clinical laboratory science practitioners, and property managers. The Committee also evaluated a proposal to transfer the regulation of denturists from the Board of Dentistry to the Alternative Health Care Board.

Section 2-8-203, MCA, requires the Committee to report to the legislature on its recommendations as to whether each of the professions or occupations should be licensed by the state. The Committee is to include in the report its estimates of the costs of each licensing program and a schedule of fees to recover these costs. The Committee's recommendations are shown on page 2. The Committee's estimates for costs and fees are shown on page 3.

Respectively submitted,

Greg Jergeson

Senator Greg Jergeson, Chairman
Legislative Audit Committee

John Cobb

Representative John Cobb, Vice Chairman
Legislative Audit Committee

Legislative Audit Committee
SUNRISE -- 1993 BIENNIUM

Introduction

The intent of the Sunrise Law (Chapter 266, Laws of Montana 1987) was to improve the legislature's ability to evaluate the need for new professional and occupational licensing programs. Under this law, the Legislative Audit Committee is required to evaluate any qualifying proposal to: 1) establish a new licensing board; 2) add another occupation or profession to an existing board; 3) consolidate any existing licensing boards; or 4) transfer a licensing program between existing licensing boards.

In order for a proposal to qualify for review, the applicant must submit the proposal in the form of a report to the Legislative Audit Committee at least 180 days before the start of the legislative session. The report must provide information to the Committee related to the need for licensure and how the proposed board will operate. For consolidation or transfer proposals the report must describe the benefits of the proposal. Each proposal must include an application fee.

After the Legislative Audit Committee receives the completed report and application fee, the Committee will hold a public meeting to consider the report. The Committee hears testimony from the applicant and any other interested parties. The Committee considers information presented in the applicant's report and testimony given at the public hearing to make its recommendation as to whether the profession or occupation should be licensed. For consolidation or transfer proposals the Committee can recommend the legislature adopt the proposal or adopt some modification of the proposal. Section 2-8-203, MCA, requires the Committee to make its recommendation in a report to the legislature for its next regular session. The report must also include an estimate of the cost to the state for each of the licensing programs along with a proposed schedule of fees that will recover the costs of each program.

Public Hearings

On October 19, 1992, the Legislative Audit Committee heard testimony concerning proposals to license crematoriums and crematory technicians and clinical laboratory science practitioners. On November 20, 1992, the Committee heard testimony concerning a proposal to license property managers and a proposal to transfer regulation of denturists to the Alternative Health Care Board. The Committee voted on its recommendations for the first two proposals at its November meeting. Final Committee action related to Sunrise was taken at the Committee's meeting on December 21, 1992.

The following is a summary of Committee action and recommendations for the four professions which went through the Sunrise process

during the 1993 biennium. Also presented are the Committee's estimates on projected costs for each of the licensing proposals and the estimated fees to cover those costs.

Clinical Laboratory Science Practitioners

A motion was made by Senator Svrcek to recommend licensure for clinical laboratory science practitioners. The motion carried with a unanimous vote.

Crematoriums and Crematory Technicians

A motion was make by Representative Pavlovich to recommend licensure for crematoriums and crematory technicians. The motion carried with a 7 - 0 vote and one abstention.

Denturists

A motion was made by Representative Pavlovich to not recommend the transfer of regulation of denturists from the Board of Dentistry to the Alternative Health Care Board. The motion carried with a unanimous vote.

Committee discussion after this motion indicated the applicant may bring other alternatives before the 1993 Legislature.

Property Managers

A motion was made by Representative Kadas to recommend licensure for property managers. The motion carried with a unanimous vote.

Licensing Program Costs and Fees

The Committee and the Department of Commerce reviewed the cost information provided by the applicants. The Committee believes the final figures are reasonable estimates of the yearly costs for the new licensing programs. To cover the costs of these new programs, the applicants and department staff estimated the necessary licensing fees. The Committee believes the fees presented in the following chart are reasonable and will comply with section 37-1-134, MCA, which requires fees to be commensurate with costs.

SUNRISE PROPOSALS -- PROJECTED EXPENDITURES AND REVENUES

Profession	Expenditures		Revenues					
	1st Year	2nd Year	Fee Types	Fee Amounts	No of 1st yr	Amount 1st yr	No of 2nd Yr	Amount 2nd Yr
Clinical Laboratory Practitioners	$27,615	$25,700	Application	$35	900	$31,500	10	$350
			License	$10	900	$9,000	10	$100
			Temp. Permit	$100	10	$1,000	10	$1,000
			Renewal	$30	0	$0	900	$27,000
			Late Renewal	$30	0	$0	50	$1,500
					Total	$41,500		$29,950
Crematoriums	$1,932 *	$1,632 *	Crematory App	$100	13	$1,300	0	$0
			Crematory Renew	$100	0	$0	13	$1,300
			Technician App	$60	5	$300	0	$0
			Technician Renew	$60	0	$0	5	$300
					Total	$1,600		$1,600
Property Managers	$19,958 *	$7,293 *	Applic & Exam	$40	250	$10,000	30	$1,200
			License	$40	250	$10,000	30	$1,200
			Renewal	$20	0	$0	250	$5,000
					Total	$20,000		$7,400

* Additional costs for licensing a new profession under an existing board

Note: Denturists are not shown since the Legislative Audit Committee did not recommend a change in the regulation of denturists.

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on January 13, 1993, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: none.

Members Absent: none.

Staff Present: Susan Fox, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SJ 4, SB 80
Executive Action: SB 45

EXECUTIVE ACTION ON SB 45

Discussion:

Sen. Towe said he worked primarily with the Board of Morticians in working out the amendments to SB 45, but he reviewed the amendments offered by the Montana Trial Lawyers Association. He was impressed by the willingness of the parties involved to work out the amendments to SB 45. Sen. Towe then went over the amendments. (Exhibit #1)

Motion:

Sen. Towe moved that the Committee accept amendments 1-8.

Vote: Amendments 1-8 adopted unanimously.

Motion/Vote:

Sen. Towe moved that SB 45 DO PASS as amended. Motion carried unanimously.

HEARING ON SJ 4

Opening Statement by Sponsor:

Sen. John "Ed" Kennedy, Senate District 3, Kalispell, provided a written opening statement. (Exhibit #2)

Proponents' Testimony:

Beta Lovitt, Montana Medical Association, said physicians are too often witnesses to the negative effects of alcohol and the consequences of alcohol abuse. The Montana Medical Association supports anything the legislature might do to curb the consumption of alcohol, especially among Montana's youth.

Opponents' Testimony:

Tom Cortingly, Montana Magazine and member of Montana Advertising Association said SJ 4 effects Montana's private business, such as bars and restaurants, because SJ 4 prohibits them from doing their jobs as they are in business to do.

Charles Wolk, Executive Director of the Montana Newspaper Association, said SJ 4 promotes censorship, and the Montana Newspaper Association opposes censorship in any form. They believe that limitations on commercial freedom of speech must be used with great care, and SJ 4 censors the advertising of a legal product. This is a case of "killing the messenger," and controlling the consumption of alcohol should be aimed at prohibition of the product itself.

Riley Johnson, Montana Broadcasters Association, said this is a censorship issue and the root of the problem is not being addressed.

Aidan Myhre, Owner and Operator of Myhre Advertising, provided written testimony. (Exhibit #3)

Steve Browning, Attorney representing Anheuser Busch, provided written testimony. (Exhibit #4)

Mark Staples, Montana Tavern Association, said he respects Sen. Kennedy's idea to address the problems of youth drinking alcohol. Mr. Staples said the local taverns, bars and grocery stores that dispense alcoholic beverages are the advertisers. A 1990 Human Services report to Congress said "research had yet to document a strong relationship between alcohol advertising and alcohol consumption." He said that a large part of advertising coming

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on January 26, 1993, at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chair (R)
Rep. Sonny Hanson, Vice Chair (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: All Present

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 45, SB 83 & HB 191
Executive Action: HB 191, SB 83, SB 45

HEARING ON HB 191

Opening Statement by Sponsor:

REP. BILL STRIZICH, House District 41, Great Falls, said HB 191 revises the section of the gaming statutes relevant to amusement games. It is important to distinguish between amusement games

Vote: **HB 191 DO PASS AS AMENDED.** Motion **CARRIED** 13 - 5.

HEARING ON SB 45

Opening Statement by Sponsor:

Rep. Pavlovich opened for **SEN. THOMAS KEATING, Senate District 44, Billings,** stating that HB 45 is at the request of the Board of Morticians to create licensing and regulation of crematoriums. **Rep. Pavlovich** was on the audit committee, and said they had placed a sunrise on the crematorium bill. The committee heard all the evidence in a two-month period. This bill is a result of the hearings in the audit committee with unanimous approval of all eight members. **SEE EXHIBIT 6**

Proponents' Testimony:

John Michelotti, Board of Morticians, Billings, said there are many considerations that must be taken into account when crematoriums are entrusted with the disposition of human remains. The identification of the deceased, the holding of remains for cremation, the after cremation process, and the processing, packing, and disposition of the cremator remains are items of concern not only to the crematory, but also to the consuming public. He said high standards must be employed during all phases of the cremation process. Disposition by cremation in the state of Montana is now close to 50%. People are considering this choice of disposition as much as ground burial. He said with the growing industry, the funeral director and crematory operators need these guidelines to protect the public. The reason for this proposed legislation is to create regulation and enforcement of proper cremation procedures, and protect the public health, safety and welfare. He said uniform procedures should be developed in order to maintain the professionalism and public trust expected from those involved in this vital service. **Mr. Michelotti** said it is the objective of the board to ensure that all the procedures reflect the high standards and serve as guidance to the professionals charged with the sacred trust of the disposition of the human body by cremation within the realm of law and dignity. He urged the committee for a do pass recommendation on SB 43.

Bonnie Tippy, Montana Funeral Director's Association, urged the committee for passage of SB 45. She said this bill is good consumer legislation, and good public policy. She addressed the bill. Page 3, new section 2, will authorize a board of funeral services. In the past, cremation and crematories have not been regulated with any rules. Funeral directors and crematory operators have done the best they can while maintaining a high standard of practice. SB 45 will make it easier for both consumers and crematory operators by giving them guidelines who the authorization agent can be, and what they can do. On page 7,

new section 4, talks about licensure when licensing crematory operators, are due after June 30th of each year. She said there is very important information on page 10, new section 7, sub 2, it states that human remains may not be cremated within 24 hours after the time of death. **Ms. Tippy** said previously there has not been such a law, and someone could be cremated within 30 minutes of death. She said it is a good idea to wait the 24 hour mandatory period no matter what the family wants.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Rep. Simon asked on page 10, section 6, sub 2, why a crematory may not accept unidentified human remains. **Carol Grell** said under the authorizing agent section there are circumstances when they have persons that are unidentified, and the crematory needs an appropriate authorizing agent to let them know they are not cremating the wrong person.

Rep. Bachini asked for an example on page 16, line 9, regarding unresolved dispute, does it mean release or not wanting to cremate? **John Michelotti** gave an example; a son of the deceased knew his father wanted to be cremated, and the mother and daughter decide they do not want to do this is called "unresolved". He said crematory operators would hold back until that dispute is handled.

Rep. Tuss asked **John Michelotti** about page 3, line 21, where it states "a majority of adult children" are needed as an authorizing agent, how can this be applied if the children are scattered from here to Australia? **Mr. Michelotti** said the majority of the children are needed for liability issues. He said it is stressed that the crematory receive a consensus of the family. **Mr. Michelotti** asked if **Bonnie Tippy** could answer the question. **Ms. Tippy** said the crematories and funeral directors practicing in Montana contact all adult children or as many as possible. **Ms. Tippy** said because of the liability situation, the funeral directors have been forced to have all the adult children consent to one disposition or another.

Chairman Benedict asked **Bonnie Tippy** if a person can order their own cremation? **Ms. Tippy** said they may not. The authorizing agent takes precedence over any pre-need agreement when it comes to cremation or burial. She said people lose their power of attorney and their rights when they die. On the funeral service side, the process of bereavement is for the living not the dead,

therefore, the reason for the authorizing agent.

Rep. Bachini said to follow **Chairman Benedict's** direction, if a person has made their wishes known in a will, does it mean the will not be carried out? **Bonnie Tippy** said that is correct. If there is a conflict with the authorizing agent or next of kin.

Rep. Pavlovich said his older brother wants to be cremated when he dies. Does this mean if the younger brother doesn't want the older brother to be cremated, that the other brother's wishes will not be carried out? **Bonnie Tippy** said that is correct. **John Michlotti** said it is the same on the ground burial side. If someone wants their family member to have a ground burial, and another family members wants that person cremated, the burial will not take place until the dispute is settled. **Mr. Micholotti** said a will is the worst place to put your desires, because they are not usually read until a week to ten days after the death.

Rep. Bachini asked how can a person put their wishes into place if they cannot do it through a will? **John Micholotti** said the people need to make sure their family members know or sign a pre-need authorization. **Bonnie Tippy** said on page 16, new section 10, it states pre-need authorization will hold above everything else.

Rep. Herron asked **Bonnie Tippy** if the 24 hour waiting period still holds by law? **Ms. Tippy** said it does.

Closing by Sponsor:

Rep. Keating closed.

HEARING ON SB 83

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, Kalispell, said SB 83 is at the request of the Department of Commerce. He said that Rick Kopel from the building codes department was here to explain the bill. SB 83 would prohibit organizations from referring persons for employment to perform the work of a licensed electrician contractor or electrician, unless a person that is being referred has the appropriate license. The state electrical board has received major complaints that organizations are referring persons without a Montana electrical license for work performed which requires a license in Montana. **Sen. Harp** distributed written testimony from James F. Brown, P.E., Chief, Building Codes Bureau, explaining the need for this legislative change. **EXHIBIT 2**

Closing by Sponsor:

Sen. Harp closed asking **Rep. Wagner** to carry his bill on the floor of the House.

EXECUTIVE ACTION ON SB 83

Motion: **REP. BRANDEWIE MOVED SB 83 BE CONCURRED IN.**

Discussion: **None**

Motion/Vote: **Rep. Cocchiarella** called the question. Voice vote was taken. Motion **CARRIED** unanimously.

Vote: **SB 83 BE CONCURRED IN.** Motion **CARRIED** 18 - 0.

EXECUTIVE ACTION ON SB 45

Motion: **REP. PAVLOVICH MOVED SB 45 BE CONCURRED IN.**

Discussion: **Rep. Pavlovich** said there is a problem on page 3, line 19, regarding the list of authorizing agents. **Paul Verdon** said if the committee strikes "in order of preference" the bill will be left open to all those people who want input. This gives the spouse the first option, whatever he/she decides will take precedence over the rest of the people. He said if you strike "in order of preference" everyone will be in the discussion.

Rep. Simon said that "written request from the deceased" should be placed at the top of the list. When someone knows how they want the disposition of their remains, it should be done.

Rep. Dowell said the committee is talking about something that is beyond the scope of this bill. The committee is looking at the right's of a person when they are dead. He said it becomes a question of the survivors and how the law reads.

Paul Verdon said **Bonnie Tippy** mentioned a person cannot specify their own disposal. He said that may be true under the existing law, but the amendment on page 16, new section 10, states a crematory operator or funeral director shall comply with the terms of pre-need authorization in releasing the disposed cremated remains. He said maybe an amendment should be inserted in that area to read "authorizing, releasing, or disposing".

Carol Grell was asked to reply. She said on page 16, new section 10, deals with the disposition of the remains only. A person's pre-need authorization would dictate how the remains would be disposed of. She asked the committee to take note that the Senate amended out lines 22 and 23, unless additional conflicting

instructions are received the designated authorizing agent, or the pre-need, would take precedence. In regards to a person being cremated, this section deals with pre-need authorization. It could be amended in this area to deal with the actual cremation if that is the committee's desire to do so. She offered an alternative suggestion on page 3, line 19, under authorizing agent giving the order of preference, the committee could place pre-need authorization at the top of the list. **Ms. Grell** said the bill should not be amended like this, it is a question that is not resolved. The board has a position that pre-need should be controlling, and it is the industry's opinion that the rights of the living take precedence, because the funeral is for them, not the dead.

Rep. Ellis said it is his opinion that this law is very unclear even with other states. He said the reason the funeral and crematory operators are coming forward with this bill is to serve the living, not the deceased.

Rep. Daily said he agrees with **Rep. Simon.** He offered a specific amendment on line 20, page 3, to read after "in order of preference" the first one would be (a) a written notarized request by the deceased. **Paul Verdon** said he would write the amendment that a written request prior to death would be pre-need authorization of a person's wish.

Rep. Larson suggested this bill be placed in a subcommittee.

Rep. Sonny Hanson asked if the committee wanted to take a vote on the preference of the deceased.

Rep. Pavlovich said this doesn't need to be placed into a subcommittee. He said to let **Paul Verdon** coordinate section 3 and section 10, and pass the bill out of the committee.

Rep. Sonny Hanson closed the discussion on SB 45 stating the committee can vote on it tomorrow, January 27, 1993.

Motion/Vote:

None

Vote:

None

EXECUTIVE ACTION ON SB 83

Motion: **REP. COCCHIARELLA MOVED SB 83 BE CONCURRED IN.**

Discussion: None

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Ec. COMMITTEE BILL NO. SB 45

DATE Jan. 26, 1993 SPONSOR(S) Sen Keating

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JOHN MICHELOTTI 1512 St Johns Blgs, MT 59102	Board of Morticians	X	
[redacted] Bonnie L. Tippy	Montana Funeral Directors Assn	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.